

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETH N. NEAD and DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, SISKIYOU NATIONAL FOREST, Grants Pass, OR

*Docket No. 00-36; Submitted on the Record;
Issued April 16, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits effective November 7, 1998.

On May 16, 1989 appellant, then a 38-year-old supervisory personnel assistant, filed a notice of occupational disease and claim for compensation, alleging that as a result of her federal employment she suffered from spasm of the colon, diverticulosis and a hiatal hernia. On October 12, 1989 appellant's claim was approved for a temporary aggravation of spastic colon.

In a medical report dated October 17, 1995, Dr. Walter E. Meihoff, a Board-certified internist and appellant's treating physician, noted that he had not seen appellant since November 1994 and had no way of knowing her recent status. In a medical report dated February 20, 1996, Dr. Meihoff noted that appellant had been disabled for about five years, but that despite that she was doing quite well with only infrequent episodes of loose stool.

In a medical report dated January 4, 1996, Dr. Keith A. Wrigley, a Board-certified internist and gastroenterologist, noted that appellant had irritable bowel syndrome, the cause for which was not known. He noted that the symptoms, which she developed during her employment, could be thought of as a transient worsening of the condition brought about by stress. Dr. Wrigley opined that with the cessation of her employment in 1988, she would no longer be able to attribute continuing irritable bowel symptoms to her employment in that, once the stress had disappeared, the irritable bowel symptoms should improve if they were the result of that stress. He concluded:

"By definition, therefore, the patient continues to have an irritable bowel syndrome and one cannot really say that the irritable bowel syndrome is resolved. The stresses related to her employment are resolved, however, and I would not, from a medical point of view, continue to blame her employment for any continuing irritable bowel symptoms."

On September 5, 1997 the Office referred appellant to Dr. Phillip Kiyasu, a Board-certified internist and gastroenterologist. In medical reports dated September 18 and October 10, 1997, Dr. Kiyasu stated that, from a medical/gastroenterologic standpoint, based on his review of her clinical record and based on her history and examination, there was no objective evidence to support the concept of medical disability based on diarrhea predominant irritable bowel syndrome, particularly given her previous job setting and job function. By letter dated October 10, 1997, Dr. Kiyasu responded to various questions. He indicated that it was unlikely that the specifics of a particular workplace or work situation can, in and of itself, be implicated as the sole factor of causality for irritable bowel syndrome and that any external stressor, which has impact on irritable bowel syndrome is usually temporary. Dr. Kiyasu continued: "Clearly, [appellant's] clinical history is consistent with irritable bowel syndrome, though based on my single interaction with appellant, I cannot identify specific objective findings for the diagnosis of irritable bowel syndrome, other than those carried out by previously." He further stated that he does not believe any specific situation or stressor can be implicated as the sole precipitant or causative factor for irritable bowel syndrome. Dr. Kiyasu concluded:

"Certainly, with her not having been in her workplace in five years, there should be no lingering affect from her original workplace with regard to her irritable bowel syndrome. Therefore, any difficulty which she continues to have with regards to irritable bowel syndrome, cannot be attributed directly to her employment of five years ago."

On September 8, 1997 the Office referred appellant to Dr. Siegfried R. Berthelsdorf, a Board-certified psychiatrist, for a second opinion. In a medical report dated September 22, 1997, Dr. Berthelsdorf noted that spastic colon is both a physical and psychological condition as psychological stress accentuates muscular contractions, irritating both polyps as well as crypts and the adjacent mucosa, causing pain and cramping. He found that appellant had most likely recovered from the effects of the work-related aggravation, in that she most likely recovered shortly after leaving her place of employment.

On October 2, 1998 the Office issued a notice of proposed termination of compensation.

By decision dated November 3, 1998, the Office terminated both compensation and medical care.

By letter dated November 9, 1998, appellant requested a hearing.

In a report dated June 2, 1999, Dr. Faulder Colby, a licensed, clinical psychologist, conducted a forensic interview evaluation, reviewed appellant's medical and work records, performed collateral interviews with appellant's former coworkers and appellant's sisters and conducted various psychological tests. He concluded that appellant suffered from social phobia and undifferentiated somatoform disorder. Dr. Colby stated:

"[I]t requires more tortuous reasoning to conclude that [appellant's] psychological and attendant physiological problems are unrelated to her work experience the Forest Service than that they are very much related. This was true, then and the evidence is strong that it most likely is still true, now. Overwhelmed by the very

frightening social interaction with her supervisor, she fled and she has been fleeing similar potential situations ever since. Given her more than adequate prior and her current very impaired levels of social function, the break point being her work at the Forest Service and even more a confrontation experience with a supervisor, it is very difficult to understand how one might conclude that there is no relationship between her prior work experience and her present mental and physical conditions.”

The hearing representative conducted a review on the written record. In a decision dated August 10, 1999, the hearing representative found that the Office properly met its burden of proof to terminate compensation benefits, as the weight of the medical evidence established that appellant had recovered from the temporary aggravation of spastic colon.

The Board finds that the Office has failed to meet its burden of proof in terminating appellant’s medical benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.³

In the instant case, Dr. Colby, appellant’s licensed clinical psychologist, submitted a medical report which supported appellant’s contention that her current mental and physical conditions were causally related to her work experience for employing establishment even though she had not worked there for a number of years. Dr. Colby’s conclusion was based on a forensic interview evaluation, a review of appellant’s medical and work records, interviews with appellant’s coworker and sisters and various psychological tests. On the other hand, Dr. Kiyasu, the Board-certified internist and gastroenterologist, who performed the second opinion examination for the Office, found that any lingering effects of appellant’s accepted condition could not be attributed directly to her duties with the employing establishment which had ceased five years before his examination. Similarly, Dr. Berthelsdorf noted that appellant most likely recovered shortly after leaving her employment.

The Board finds that an unresolved conflict of medical opinion exists between Dr. Colby and Drs. Kiyasu and Berthelsdorf.⁴ Due to this unresolved conflict in the evidence, the Office

¹ *Arthur Sims*, 46 ECAB 880 (1995).

² *Betty M. Regan*, 49 ECAB 496, 501 (1998).

³ *Id.*; *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Jose Hernandez*, 47 ECAB 288, 295 (1996).

has not met its burden of proof in terminating benefits. Accordingly, the Board hereby reverses the Office's decisions terminating benefits.

The decisions of the Office of Workers' Compensation Programs dated August 10, 1999, November 3 and October 2, 1998 are hereby reversed.

Dated, Washington, DC
April 16, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member